

**ADMINISTRATIVE PENALTY DISCUSSION PURSUANT TO THE NOV ISSUED FOR,
LOGAN CITY
SETTLEMENT AGREEMENT DOCKET NO. M14-02**

Infractions of the Utah Water Quality Act are penalized up to \$10,000/day/violation for civil penalties (\$25,000/day/violation for criminal) according to guidelines established in the penalty policy (*Utah Administrative Code R317-1-9*).

The principles that apply in the penalty policy are:

- 1) Penalties should be based on the nature and extent of the violation
- 2) Penalties should at a minimum, recover the economic benefit of noncompliance;
- 3) Penalties should be large enough to deter noncompliance;
- 4) Penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

To determine a civil penalty the State will consider:

- 1). the magnitude of the violations;
- 2) the degree of actual environmental harm or the potential for such harm created by the violations;
- 3) response and/or investigative costs incurred by the State or others;
- 4) any economic advantage the violator may have gained through noncompliance;
- 5) recidivism of the violator
- 6) good faith efforts of the violator
- 7) ability of the violator to pay;
- 8) the possible deterrent effect of a penalty to prevent future violations.

In the case of negotiated adjustments to penalties, arguments must be based on the considerations above.

Civil penalties for settlement purposes should be calculated based on the following formula:

**CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL
CONSIDERATIONS**

Penalties are grouped in four main categories:

- A. \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment.
- B. \$2,000 to \$7,000 per day. Major violations of the Utah Water Quality Act, associated regulations, permits or orders.
- C. \$500 to \$2,000 per day. Significant violations of the Utah Water Quality Act, associated regulations, permits or orders.

- D. Up to \$500 per day. Minor violations of the Utah Water Quality Act, regulations, permits or orders.

Penalties are established within the penalty ranges shown above, based on the following criteria:

- History of compliance or non-compliance,
- Degree of willfulness or negligence, and
- Good faith efforts to comply.

Adjustments to the civil penalty include:

- The economic benefit gained as a result of non-compliance,
- Investigative costs incurred by the State and/or other governmental level,
- Documented monetary costs associated with environmental damage.

PENALTY - The penalty for FACILITY has been calculated as follows:

Gravity Component:

The gravity component of the penalty is based on the City's failure to develop and implement their pretreatment program. The gravity component discussion is separated into two different areas for justification of each gravity penalty. The timeframe for the pretreatment ordinance portion of the gravity penalty is one year. The gravity penalty for the failure to have effective procedures to implement the pretreatment program is for one year. The penalties were assessed for one day per month for each month of non-compliance.

The following is the justification for the gravity penalty for Failure to Implement Effective Procedures to implement the pretreatment program. The City received 75% credit for degree of negligence and history of compliance. This determination was due to evidence that the City had not evaluated IUs within the service area and the procedures to implement the pretreatment program have not been evaluated by the City for the effectiveness to implement the pretreatment program. The City received 100% credit for good faith efforts to comply. This determination was due to the City's efforts to comply with the NOV. Based on the above criteria the gravity penalty will be \$1,000.

The following is the justification for the gravity penalty for Failure to have a Sewer Use Ordinance (SUO) that meets the requirements of the regulations. The City has failed to have a SUO that meet the regulations as stated in the 2013 Audit by the DWQ. The City failed to implement an ordinance that addresses the requirements of pretreatment programs in R317-8-8. The City received 25% credit for degree of negligence and history of compliance. This determination was due to evidence that the City had not reviewed the SUO and had indicated in previous pretreatment inspections and audits that the SUO meet the requirements of the regulations. The City received 100% credit for good faith efforts to comply. This determination was due to the City's efforts to comply with the current SUO and change the

SUO to be compliant with the regulations of R317-8-8.8. Based on the above criteria the gravity penalty will be \$3,000.

Economic Benefit Justification:

BEN is a program developed by EPA to determine the economic benefit a violator has gained by not complying with regulations. A BEN was not done for this SA because of the actions taken immediately in response to the NOV as well as actions taken to resolve the issues in the NOV.

